

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

AMENDS 312 IAC 9-12 TO ADD A SPECIAL)	Administrative Cause
CIRCUMSTANCES HUNTER EDUCATION)	Number: 14-141D
CERTIFICATION)	
)	LSA Document #14-511(F)

***AMENDED REPORT ON RULE PROCESSING, PUBLIC HEARING, AND
HEARING OFFICER ANALYSES WITH RECOMMENDATIONS
REGARDING FINAL ADOPTION***

1. RULE PROCESSING

For consideration as to final action, is the proposed addition of 312 IAC 9-12-2.5 to establish a special circumstances hunter education certification and issuance of a special circumstances hunter safety card. Also, proposed are amendments to 312 IAC 9-12-3 to allow an individual who holds a special circumstances hunter safety card to purchase a hunting license.

The Natural Resources Commission (the "Commission") gave preliminary adoption to the proposed amendments on September 16, 2014. As reported in the pertinent portions of the September minutes:

Request for preliminary adoption of amendments to 312 IAC 9-12 governing the special circumstances hunter safety card for individuals with a disability; Administrative Cause No. 14-141D

Lieutenant Colonel Steve Hunter, Division of Law Enforcement, presented this item. Hunter explained that in 1995 it became mandatory for any individual born after December 31, 1986 to complete a hunter education course before they may purchase a hunting license. Hunter noted that the education course must include components of hunter safety, conservation principles and sportsmanship and is administered by Indiana Conservation Officers. Approximately, 16,000 students are certified annually through these courses, according to Hunter.

Hunter observed that in 2008 the apprentice hunting license became available. Hunter explained that with an apprentice hunting license an individual who would otherwise be required to complete the hunter education course and pass the test could hunt without completing the course provided the individual was accompanied by a licensed hunter aged 18 years or older. Hunter reported that an individual is limited to purchasing three apprentice licenses.

Hunter conveyed that based upon the request of a parent of a child with a developmental disability, Representative Arnold authored a bill that upon passage by the Indiana General Assembly in 2014 became I.C. 14-22-12-1.8. According to Hunter, I.C. 14-22-12-1.8 authorizes certain individuals who complete the hunter education course but who cannot successfully pass the test to obtain a “special circumstances hunter safety card”. With this card the individual may purchase a license and hunt while in close proximity to a licensed hunter age 18 years or older.

Pursuant to the statute, the individuals who may obtain a special circumstances hunter safety card are individuals with a developmental disability as defined by I.C. 12-7-2-61 or a child with a disability defined at I.C. 20-35-1-2. Hunter noted that the statute authorizes the Commission to adopt rules to carry out the statutory requirements and to identifying other individuals with permanent disabilities who may qualify for this safety card.

Hunter stated that this rule “reiterates some of the statute language” that identifies a human services statute and an education statute both of which would limit the benefit gained by a special circumstances hunter safety card to individuals who are under 22 years of age. Hunter added that this rule, at section (a)(3) “extends the opportunity to persons with similar disabilities” that manifest after the individual is 22 years of age or older.

The Chair inquired “how many do you anticipate this applies to a year?”

Hunter responded, “It’s a handful.” Hunter added that the application form is prepared and the card is available but noted that no applications have been filed and no cards have been issued.

The Chair recognized Barb Simpson, Executive Director of the Indiana Wildlife Federation, who offered support for the rule proposal.

Pat Early moved to approve preliminary adoption of amendments to 312 IAC 9-12 governing the special circumstances hunter safety card for individuals with a disability. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Joseph Hoage, Chief Legal Counsel for the Department of Natural Resources (“DNR”) submitted to the Office of Management and Budget (“OMB”) requests for “exemption to the suspension of rulemaking action under the provisions of Executive Order 13-03”. In a letter dated October 27, 2014, Christopher D. Atkins, Director of OMB, wrote that “DNR’s request qualifies for an exception under Section 6(b) of Executive Order 13-03. Therefore, DNR may proceed...”

The “Notice of Intent” to adopt the rule amendments was published in the INDIANA REGISTER at 20141224-IR-312140511NIA on December 24, 2014. The notice identified Lt. Col. Steve Hunter, with the Division of Law Enforcement, as the “small business regulatory coordinator” for purposes of IC 4-22-2-28.1.

The Commission caused the information required by IC 4-22-2-22.5 to be included in the rulemaking docket maintained on its website at <http://www.in.gov/nrc/2377.htm>. The rulemaking docket was also updated periodically as the rule adoption progressed.

As specified by the Executive Order that then applied, proposed fiscal analyses of the rule proposal, and the rule standards analysis under IC 4-22-2-19.5 were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to OMB and the Legislative Council on January 7, 2015. On April 1, 2015, the Commission received an approval letter from Brian E. Bailey, Director of the State Budget Agency, which stated, in part, “After reviewing the proposed rule, the recommendation of the State Budget Agency is that the rule changes be approved.”

On April 15, 2015, the Division of Hearings submitted the proposed rule to the Legislative Services Agency (“LSA”), along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement” or EIS). The Notice of Public Hearing and the Justification Statement (IC 4-22-2-24(d)(3)) were submitted to LSA on April 16, 2015. On April 29, 2015, the following were posted to the INDIANA REGISTER: the text of the proposed rule (20150429-IR-312140511PRA); the notice of public hearing (20150429-IR-312140511PHA); and the Economic Impact Statement (20150429-IR-312140511EIA). Following receipt from LSA of an “Authorization to Proceed”, the Division of Hearings caused Notice of Public Hearing to be published on May 4, 2015 in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County, Indiana.

The Statement Concerning Rules Affecting Small Businesses (the “EIS”), as required under IC 4-22-2.1-5, and submitted by the Small Business Regulatory Coordinator, indicates:

Economic Impact Statement
LSA Document #14-511
(Administrative Cause No. 14-141D)

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

This rule liberalizes the requirement for passing a hunter education class by a person with a disability. The rule will have not regulatory impact on small businesses.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

Small businesses will not incur any administrative costs as a result of this rule.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

There is no estimated economic impact as a result of this rule as the rule is not regulatory in nature.

Justification Statement of Requirement or Cost:

Not applicable in this circumstance.

Regulatory Flexibility Analysis of Alternative Methods:

There are no alternatives that could be less intrusive or costly to small businesses.

3. PUBLIC HEARING AND PUBLIC COMMENT

The June 2, 2015, public hearing was convened as published. Lt. Col. Steve Hunter and Lt. Larry Morrison from the DNR, Division of Law Enforcement attended the public hearing. No other member of the public was in attendance. The public comment period closed at the end of June 2, 2015. The close of the public comment period was also posted on the Commission's online rule docket at <http://www.in.gov/nrc/2377.htm>. No public comments were received.

4. HEARING OFFICERS ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION

Under IC 14-22-12-1.8 an "individual with special circumstances" means an individual who has a developmental disability (as defined by IC 12-7-2-61); is determined to be a child with a disability (as defined by IC 20-35-1-2); or has a permanent disability as determined by rules adopted by the DNR. The proposed addition of 312 IAC 9-12-2.5 provides the special circumstances hunter education certification requirements. 312 IAC 9-12-3(b)(6) is added to include that presentation of a special circumstances hunting safety card issued by the DNR demonstrates successful completion of a hunter education program.

The DNR may issue a "special circumstances hunting safety card" to an individual who qualifies under IC 14-22-12-1.8 and who attends a complete course of instruction in hunter education offered by the DNR under IC 14-22-35 but is unable to pass the required testing. Under IC 14-22-12-1.8(g), a special circumstances hunter must comply with the requirements provided by statute and rule, including obtaining a valid hunting license issued under IC 14-22-11. The special circumstances hunter must also be accompanied by an individual who is at least 18 years of age and holds a valid hunting license. IC 14-22-12-1.8(h) requires that the

accompanying individual must be in close enough proximity to monitor the special circumstances hunter's activities and be able to communicate with the special circumstances hunter at all times. The individual may not accompany more than two special circumstances hunters at one time.

Effective July 1, 2015, SEA 500 (P.L. 233-2015), SECTION 26, amended IC 14-22-12-1.8(a)(2) as follows: "Sec. 1.8. (a) As used in this section, 'individual with special circumstances' means an individual who: ... (2) is determined to be a ~~child~~ **student** with a disability (as defined by ~~IC 20-35-1-2~~; **in IC 20-35-1-8**)." SECTIONS 272 AND 273 repealed IC 20-35-1-2 and IC 20-35-1-5, respectively. SECTION 274 added IC 20-35-1-8, which defines "student with a disability" as "an individual who: (1) is at least three (3) years of age but less than twenty-two (22) years of age; and (2) because of physical or mental disability is incapable of being educated properly and efficiently through normal classroom instruction, but who, with the advantage of a special educational program, may be expected to benefit from instruction in surroundings designed to further the educational, social, or economic status of the student."

312 IAC 9-12-2.5, as published in the *Indiana Register*, currently reads:

Sec. 2.5. (a) As used in this section, "individual with special circumstances" means an individual who:

- (1) ...;
- (2) is a *child* with a disability as defined in *IC 20-35-1-2*; ...

In order to maintain statutory consistency, it is recommended that the proposed language at 312 IAC 9-12-2.5 be further amended as follows:

Sec. 2.5. (a) As used in this section, "individual with special circumstances" means an individual who:

- (1) ...;**
- (2) is a *student* with a disability as defined in *IC 20-35-1-8*;**...

The proposed new rule, 312 IAC 9-12-2.5, and the amendment to 312 IAC 9-12-3, as presented in "Exhibit A" of this report, appear to satisfy the requirements to establish the statutory criteria for determining qualifications for a special circumstances hunting safety card

and to adopt rules to carry out the intent of IC 14-22-12-1.8. The proposed amendments are appropriate and are presented for final adoption.

Dated: June 30, 2015

Jennifer M. Kane
Hearing Officer

EXHIBIT A

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #14-511(F)

DIGEST

Adds 312 IAC 9-12-2.5 governing special circumstances hunting safety cards. Amends 312 IAC 9-12-3 to allow an individual with a special circumstances hunting safety card to purchase a hunting license. Effective 30 days after filing with the Publisher.

312 IAC 9-12-2.5; 312 IAC 9-12-3

SECTION 1. 312 IAC 9-12-2.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-12-2.5 Special circumstances hunter education certification

Authority: IC 14-10-2-4; IC 14-22-2-6; IC 14-22-12-1.8

Affected: IC 12-7-2-61; IC 14-22-35; IC 20-35-1-8

Sec. 2.5. (a) As used in this section, "individual with special circumstances" means an individual who:

- (1)** has a developmental disability as defined in IC 12-7-2-61;
- (2)** is a student with a disability as defined in IC 20-35-1-8; or
- (3)** has a developmental disability as defined in IC 12-7-2-61 that manifests itself on or after the individual is twenty-two (22) years of age and is due to injury or disease, but excludes an impairment that is attributable to the normal aging process.

(b) The department may issue a special circumstances hunting safety card under this section to an individual with special circumstances as described in this section who attends a complete course of instruction in hunter education offered by the department or the department's agent under IC 14-22-35 but is unable to pass the examination.

(c) An individual with special circumstances must apply for a special circumstances hunting safety card on a completed and signed departmental form that includes a statement of disability completed by a licensed physician or nurse practitioner. If the applicant is under eighteen (18) years of age, a parent or legal guardian who is legally responsible for the applicant's activities must sign the application. (*Natural Resources Commission; 312 IAC 9-12-2.5*)

SECTION 2. 312 IAC 9-12-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-12-3 Demonstration of compliance with hunter education requirements

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 4-21.5; IC 14-22-11-3; IC 14-22-12-1.7

Sec. 3. (a) An agent duly appointed by the director under IC 14-22-11-3, or a clerk of a county circuit court, must not issue a hunting license to an individual subject to section 2 of this rule unless the individual:

- (1) demonstrates compliance with section 2 **or 2.5** of this rule; or
- (2) purchases an apprentice hunting license under IC 14-22-12-1.7.

(b) An individual subject to section 2 **or 2.5** of this rule may demonstrate successful completion of a hunter education program by any one (1) of the following methods:

- (1) The presentation of a certificate of completion that indicates a hunter education program offered by the department or the department's agent was successfully completed by the applicant. A certificate of completion shall be completed on a department form.
- (2) For an individual less than twelve (12) years of age upon completion of attendance at a hunter education course, the presentation of a certificate of attendance that indicates a hunter education program offered by the department or the department's agent has been monitored by the applicant. A license issued under this subdivision authorizes an applicant to hunt only if the applicant is accompanied by a parent or guardian. A certificate of attendance shall be prepared on a department form.
- (3) A statement made under oath or affirmation by the applicant, on a department form, stating the applicant successfully completed a hunter education program approved under section 2 of this rule.
- (4) A properly completed hunting license issued previously to the applicant.
- (5) A final order from the commission under IC 4-21.5 and 312 IAC 3 stating the applicant is entitled to receive a hunting license.
- (6) The presentation of a special circumstances hunting safety card issued by the department.**

(Natural Resources Commission; 312 IAC 9-12-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2758; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Nov 3, 2009, 3:34 p.m.: 20091202-IR-312090044FRA; readopted filed May 20, 2014, 9:43 a.m.: 20140618-IR-312140017RFA)